

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA**

NORTHERN DIVISION

CYNTHIA ELLISON,

Plaintiff

V.

**AUBURN UNIVERSITY
MONTGOMERY,**

Defendant

Civil Action No.
2:05CV902-MHT-DRB

DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT

Defendant Auburn University Montgomery (AUM) moves the Court for Summary Judgment on Plaintiff's claims that AUM violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* There is no genuine issue of material fact, and AUM is entitled to judgment as a matter of law for the following reasons:

1. Plaintiff's allegations based on events occurring before August 15, 2004 are time-barred by Section 706(e)(1) of Title VII, 42 U.S.C. § 2000e-5(e)(1).
2. Plaintiff has no evidence of disparate treatment based on race to support her Count I claim.
3. Plaintiff engaged in no protected activity and suffered no adverse employment action as a result of any alleged retaliation, and consequently Plaintiff's Count II claim fails.

4. AUM maintained no hostile work environment as a matter of law and, in any event, took prompt remedial action to address Plaintiff's concerns; Plaintiff's Count III claim fails.
5. Plaintiff voluntarily retired from employment for reasons unrelated either to race or to retaliation; Plaintiff's Count IV claim of "constructive discharge" fails as a matter of law.

Because Plaintiff cannot establish every element of each cause of action she asserts, she can prove no set of facts allowing her to recover against AUM.

Consequently, her proof fails as a matter of law, *Brown v. City of Clewiston*, 848 F.2d 1534, 1537 (11th Cir. 1988), entitling AUM to summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). AUM requests that the Court grant its motion.

AUM relies on the Declarations of Roger Ritvo, Ph.D. , Bayo Lawal, Ph.D., Debra Foster, SPHR, Nell Robinson, Craig Sparrow, and R. C. Cox; on the deposition testimony of Plaintiff and of Faye Ward; and on the accompanying Statement of Material Facts as to Which There is No Genuine Issue to be Tried and Memorandum of Law, all submitted simultaneously in support of this motion.

AUBURN UNIVERSITY MONTGOMERY

s/Burton F. Dodd
Burton F. Dodd

Georgia Bar No. 223880
bdodd@laborlawyers.com

FISHER & PHILLIPS LLP
945 East Paces Ferry Road
Suite 1500
Atlanta, Georgia 30326
(404) 231-1400 (Voice)
(404) 240-4249 (Facsimile)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA**

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I certify that, on July 21, 2006, I electronically filed Defendant's Second Motion for Summary Judgment and its accompanying Statement of Material Facts as to Which There is No Genuine Issue to be Tried, Memorandum of Law, and Index of Testimony, Exhibits, and Other Evidence with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

AUBURN UNIVERSITY MONTGOMERY

Georgia Bar No. 223880
bdodd@laborlawyers.com

FISHER & PHILLIPS LLP
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